

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0557

Sales Tax

For Calendar Years 1994, 1995, 1996, 1997, and 1998

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ISSUE(S)

I. Tax Administration – Proposed Assessment of Tax

Authority: IC 6-8.1-5-1;

Taxpayer protests the assessment because it was made without an examination of the actual records and he asserts that he is not liable for sales tax because he is a broker.

STATEMENT OF FACTS

Taxpayer is a retailer of new and used medical equipment and medical supplies and operates out of his home. Taxpayer is organized as a sole proprietor for federal income tax purposes. Taxpayer is not a registered retail merchant with the State of Indiana and has made purchases from his vendors claiming exemption for resale. During the field audit, the taxpayer indicated that he did not sell equipment and merely facilitated the sale of the equipment by matching up the sellers with the buyers. Taxpayer argues that he did not take title to any equipment, he was not a retail merchant, and did not need to be registered. Taxpayer further states he acted as an agent and sold the equipment on behalf of the seller and received a commission from the sale. However, SMSI sold equipment to the taxpayer, invoicing and shipping directly to the taxpayer's home in Indiana. SMSI billed the taxpayer sales tax, but the taxpayer refused to pay it claiming exemption for resale. Taxpayer issued an improper exemption certificate to SMSI after several attempts were made by SMSI to collect the sales tax.

Taxpayer was advised of the impending audit and initially agreed to provide records. However, the taxpayer failed to fulfill the initial records request and subsequently failed to respond to any of the auditor's requests for records and failed to reply to any of the auditor's contacts. The audit proposed a "Best Information Audit" assessment for sales tax on unreported sales. The assessment is based upon the average annual taxable sales of a local new and used medical equipment retailer believed to be about the same size and volume as the taxpayer.

I. Tax Administration – Proposed Assessment of Tax

DISCUSSION

Taxpayer has not filed Indiana income tax returns since 1993. Records examined include information obtained from the Internal Revenue Service on income reported for the years 1994, 1995, and 1996, and other working papers.

IC 6-8.1-5-1 (a) provides, in part: "[i]f the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." The statute also provides: "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Here, the Department proposed an assessment of tax that the taxpayer protested. The taxpayer merely sent a few copies of invoices and/or offers to buy and sell and states he is a broker.

Barron's Law Dictionary defines a broker as "one who for commission or fee, brings parties together and assists in negotiating contracts between them." At best, the taxpayer may be classed as a jobber. Barron's Law Dictionary defines a jobber or "a middleman in the sale of goods, or typically, one who buys goods from a wholesaler and then sells them to a retailer. A jobber is distinguished from a broker or agent, who sells goods on another's behalf; a jobber actually purchases the goods himself, and the resells them."

The evidence provided by the taxpayer indicates it made purchases to be resold. No other evidence was provided.

IC 6-8.1-5-1 (c) provides, in part: "{t}he department shall demand payment...of any part of the proposed tax assessment, interest and penalties that is finds owing because:...after consideration of the evidence presented in the protest or hearing, the department finds the person still owes the tax.

Here, the taxpayer failed to provide evidence either to the auditor or the hearing officer after subsequent opportunities to present evidence were afforded. The charging of sales tax against “best information available” income was appropriate because no alternative means for the tax assessment existed. The auditor used the best and only information available at the commencement of the audit and the taxpayer has failed to present any viable evidence to rebut the presumptive validity of the assessment.

FINDING

Taxpayer’s protest is denied.